



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

June 17, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

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First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

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Fifth District

STATUS REPORT ON AB 811 IMPLEMENTATION

On April 14, 2009, your Board directed this Office, in coordination with the Treasurer & Tax Collector (TTC) and the Energy and Environmental Policy Team, to report back on a monthly basis on its progress in establishing a countywide energy efficiency and renewable energy financing program pursuant to AB 811, Chapter 159 Statutes of 2008.

Your Board also directed that the report should include a schedule (with the explicit goal of utilizing American Recovery and Reinvestment Act (ARRA) Federal Energy Efficiency and Conservation Block Grant (EECBG) or other Stimulus-related funding and having a program in place by July 2009), an assessment of financial viability, and an inventory of other appropriate funding sources.

Summary of Activities

Schedule

On May 15, 2009, we provided your Board with our first monthly update report. Included in that report was an initial assessment of activities that needed to be completed and a rough timeline indicating when a program could be implemented. We have slightly modified the assessment by adding additional, key activities and removing one. However; for now, the program implementation date remains as April of 2010 until further investigation is completed.

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Activity	Estimated Completion Date
Legal Analysis of Financing Options	June 2009
Investigate Other Options	August 2009
First Phase Outreach to Cities Within the County (to be included in initial program design and financing program)	October 2009
Complete Program Design	December 2009
Funding/Financing Completed	December 2009
Authorizing Resolutions Completed	December 2009
Contractors on Board (e.g., Turnkey Program Management; individual contractors)	March 2010
Implementation of a County AB 811 Program	April 2010

Staff will request funds under its Block Grant application to implement the countywide AB 811 program and provide any short term funding for initial operating costs. The application is due on June 25, 2009. In addition, Internal Services Department (ISD) will hire a consultant to begin the development of a countywide program using 08-09 budgeted funds.

Bond Counsel Opinion

In May 2009, the TTC requested that the law firm of Hawkins Delafield & Wood LLP (Hawkins) undertake an analysis of the contractual assessments authorized pursuant to AB 811. This analysis was completed on June 11, 2009 and sought to answer the following questions:

- Are AB 811 contractual assessments (loans) subject to Proposition 218?
- Are AB 811 contractual assessments a priority lien on the assessed property?
- What is the effect of contractual prohibitions in a Deed of Trust on the priority of an AB 811 contractual assessment lien?

Hawkins concluded that the contractual assessments authorized under AB 811 do not constitute "assessments" as contemplated by Proposition 218 and the Government Code. Nevertheless, AB 811 does expressly provide that such contractual assessments have a "super-priority" status and would serve as a priority lien on the assessed property. Hawkins further concludes that AB 811 provides specific due process safeguards that will mitigate the effect of any contractual prohibitions included in deeds of trust.

The priority status of an AB 811 assessment lien is of critical importance to the County's ability to finance an AB 811 program through the issuance of bonds. Hawkins recommends that the County pursue a validation action through the Los Angeles

Superior Court that will seek "to confirm the legal conclusion that AB 811 charges are valid and that the liens imposed in connection with contractual assessments are afforded super-lien priority status." Should a validation action prove successful, Hawkins advises that existing law will be sufficient to allow the County to initiate an AB 811 financing program. Nonetheless, the County may still wish to consider a legislative initiative that will help to clarify the Legislature's intention to provide priority status to AB 811 assessment liens.

California State Communities Development Authority

The California State Communities Development Association (CSCDA), a State-run Joint Powers Authority that exists to provide municipal financing to cities and counties throughout the State, has announced the formation of a State-wide AB 811 program available to all member cities and counties. The program is called CaliforniaFIRST; and proposes to provide a "turnkey" AB 811 program services to cities and counties that wish to implement an AB 811 program. CaliforniaFIRST will conduct all necessary steps to develop an AB 811 program including all of the activities identified in the table above and provide project financing. Interested cities and counties would simply sign on to the CaliforniaFIRST program and pay an administration fee and operating costs.

The County will begin discussions with the consultants hired by CSCDA to manage the CaliforniaFIRST program to explore the positives and negatives of the program. Issues to be discussed include: cost impacts, schedule, financing benefits to constituents, level of customer service, economies of scale, and participant influence on program elements.

Next Steps

Under a County-run AB 811 program, the County would encourage cities within the County to join its program to obtain economies of scale in start-up, operating and financing costs and to develop a regionally managed program available to all cities. On May 13, 2009, the CEO sent a letter to all City Managers within the County indicating the County's intent to form an AB 811 program which would be eligible to cities located within the County.

On June 16, 2009, the County and the consultants to CaliforniaFIRST presented an overview of AB 811 to the Green Task Force Committee of the Los Angeles Economic Development Corporation to generate interest and action among these stakeholders in helping to develop a regional program which could stimulate the economy, attract businesses and create green jobs.

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On June 24, 2009, the County will host an AB 811 informational workshop for all interested cities. This Office has issued an invitation to the directors of all of the County's Councils of Government notifying them of this workshop and requesting that any interested city staff attend. The event will be held at the Metropolitan Transit Authority (MTA) Headquarters building in the MTA Board room from 2:00pm to 4:00 pm.

If you have any questions, or require further information on this matter, please contact Ellen Sandt, Deputy Chief Executive Officer at (213) 974-1186 or esandt@ceo.lacounty.gov.

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TT:JJ:ef

C: Internal Services Department
Treasurer and Tax Collector

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